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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,697	05/24/2004	Kenneth William Austin	03292.101850	3696
66569 7590 07/11/2008 FITZPATRICK CELLA (AMEX) 30 ROCKEFELLER PLAZA NEW YORK, NY 10112				
EXAMINER				
TROTTER, SCOTT S				
ART UNIT		PAPER NUMBER		
3694				
MAIL DATE		DELIVERY MODE		
07/11/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/709,697

Applicant(s)

AUSTIN ET AL.

Examiner

SCOTT S. TROTTER

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to the amendment received on April 9, 2008. This rejection is made FINAL as being necessitated by the applicant's amendment.

Response to Arguments

2. Most of the applicant's arguments were made moot by the new grounds of rejection necessitated by applicant's amendment. Applicant's argument that ANI and PIN code were each information relating to the customer was helpful.

The 101 rejection of claim 6 is withdrawn in light of the applicant's amendment.

Official Notice

3. Applicant(s) attempt at traversing the Official Notice findings as stated in the previous Office Action (Paper No. 01/16/2008, Paragraph No. 8) is inadequate. Adequate traversal is a two step process. First, Applicant(s) must state their traversal on the record. Second and in accordance with 37 C.F.R. §1.111(b) which requires Applicant(s) to specifically point out the supposed errors in the Office Action, Applicant(s) must state *why* the Official Notice statement(s) are not to be considered common knowledge or well known in the art. In this application, while Applicant(s) have clearly met step (1), Applicant(s) have failed step (2) since they have failed to argue *why* the Official Notice statement(s) are not to be considered common knowledge or well known in the art. Because Applicant(s)' traversal is inadequate, the Official Notice statement(s) are taken to be admitted as prior art. See MPEP §2144.03.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3 and 5-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Elston et al. (US PG-Pub 2002/0143655 A1 hereafter Elston).

As per claim 1 Elston teaches:

A method for facilitating the processing of requests for an item, comprising:
receiving a communication from a caller, the communication including a request for said item; (*See Elston abstract*. Purchasing goods or services.)
obtaining information relating to the customer for use in processing the request;
evaluating a first set of criteria related to the information related to the customer to determine if the request involves potential fraud;
selectively evaluating, based upon the evaluation of the first set of criteria, a second set of criteria related to the information relating to the customer to determine if the request involves potential fraud; (*See Elston paragraphs 382, 386 and 394*. Teaches using an ANI and PIN code or password to authorize a transaction.) and outputting an indication of the evaluating step and using the indication to determine whether to issue the

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requested item. (*See Elston paragraph 382.* Unauthorized transactions are not allowed to proceed.)

As per claim 2 Elston teaches:

The method of claim 1, wherein said step of receiving a communication from a customer includes receiving a communication from a customer wherein said item is at least one of a good, service, transaction, financial account and financial card. (*See Elston abstract. Purchasing goods or services.*)

As per claim 3 Elston teaches:

The method of claim 1 wherein the evaluating the first set of criteria step includes at least one of evaluating information from an automatic number identification service and information from a password provided by the customer. (*see Elston paragraph 394*)

As per claim 5 Elston teaches:

The method of claim 1, further including using the outputted indication to determine whether to authorize a transaction requested by the caller. (*See paragraphs 382 & 386.*)

As per claim 6 it is a parallel system claim to method claim 1 and is rejected under the same rationale as claim 1.

As per claims 7, 8, and 9 they contains no new limitation not directed to intended use which are considered nonfunctional under MPEP 2106.(II.C) since no new functional limitations are introduced they are rejected as claims 1, 3, and 5 above. The only difference is the kind of item being requested which is a nonfunctional limitation.

As per claim 10 completing a purchase changes the financial information related to the said transaction card account.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elston in view of Official Notice.

As per claim 4 Elston teaches:

The method of claim 1, further including evaluating override criteria related to the customer for use in determining whether to issue the requested item.

While Elston does not explicitly teach overriding security Official Notice is taken that it is old and well known in the art of credit card transactions to override a security concern by talking to the customer to verify their identity such as by asking their mother's maiden name. Therefore it would have been obvious to a user of ordinary skill in the art at the time the invention was made contact with an operator who can override the security.

As per claim 11 it contains no new limitation not directed to intended use which are considered nonfunctional under MPEP 2106.(II.C) since no new functional limitations are introduced it is rejected as claim 4 above.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Examiner's Note: The Examiner has cited particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the

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responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

10. Any inquiry concerning this communication from the examiner should be directed to Scott S. Trotter, whose telephone number is 571-272-7366. The examiner can normally be reached on 8:30 AM – 5:00 PM, M-F.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell, can be reached on 571-272-6712.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

13. The fax phone number for the organization where this application or proceeding is assigned are as follows:

(571) 273-8300 (Official Communications; including After Final
Communications labeled "BOX AF")

(571) 273-6705 (Draft Communications)

sst
7/14/2008

/James P Trammell/
Supervisory Patent Examiner, Art Unit 3694

